UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

v. 13 CR 521 (RA)
Conference-Decision

JOSEPH MANUEL HUNTER, ADAM SAMIA and CARL DAVID STILLWELL

Defendants

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New York, N.Y.
November 2, 2017
10:30 a.m.

Before:

HON. RONNIE ABRAMS
District Judge

APPEARANCES

JOON H. KIM
Acting United States Attorney for the
Southern District of New York
PATRICK EGAN
REBEKAH DONALESKI
Assistant United States Attorney

MARLON G. KIRTON PC
Attorney for Defendant Hunter
MARLON G. KIRTON

ROTHMAN SCHNEIDER SOLOWAY & STERN LLP
Attorney for Defendant Samia
DAVID M. STERN

THOMPSON & KNIGHT LLP
Attorney for Defendant Stillwell
ROBERT W. RAY

-Also Present-
DIANE FERRONE
DAVID GREENFIELD - Incoming CJA

(In open court; case called)

THE DEPUTY CLERK: Counsel, state your name for the record.

MR. EGAN: Good morning, your Honor. Patrick Egan and Rebekah Donaleski for the government.

THE COURT: Good morning.

MR. STERN: David Stern for Mr. Samia.

MR. RAY: Robert Ray for Mr. Stillwell.

MR. KIRTON: Marlon Kirton for Joseph Hunter.

THE COURT: Good morning. Good morning to all of you.

So you all can be seated. We have a lot to cover today.

So the items on my agenda include arraigning Mr. Samia and Mr. Stillwell on the tenth superseding indictment -- Mr. Hunter has already been arraigned on that indictment -- discussing the status of the letter rogatory, addressing the outstanding motions in limine, and setting a schedule for the remainder of the case pending trial.

Let's begin with the arraignment.

Mr. Egan or Ms. Donaleski, I reviewed the tenth superseding indictment. I know it adds Mr. Hunter as a defendant, and it provides some factual allegations regarding his background.

Could you summarize any other differences between the tenth superseding indictment and the prior one?

MR. EGAN: I don't think there are any substantive changes in the S9. I think Hunter was referred to as CC-1 and he is now referred to as Hunter in the indictment, but I don't think other than what you've mentioned there are any substantive changes.

THE COURT: Thanks.

Mr. Samia and Mr. Stillwell, you have been named in the tenth superseding indictment in this case that was filed on October 16. It is now the current version of the charges against you. It charges you both with five counts.

Count One charges you with conspiracy to commit murder for hire.

Count Two charges you with murder for hire.

Count Three charges you with conspiracy to murder and kidnap in a foreign country.

Count Four charges you with using and carrying a firearm during in relation to a crime of violence constituting murder.

And Count Five charges you with conspiracy to commit money laundering.

The superseding indictment also contains a forfeiture allegation with respect to these counts. So I'm going to ask each of you to stand separately.

I'll start with Mr. Samia.

Have you seen a copy of this indictment?

DEFENDANT SAMIA: Yes, ma'am.

THE COURT: Have you discussed it with your attorney?

DEFENDANT SAMIA: Yes, ma'am.

THE COURT: Would you like me to read it out loud or do you waive its public reading?

DEFENDANT SAMIA: Waive.

THE COURT: How do you plead?

DEFENDANT SAMIA: Not guilty.

THE COURT: You may be seated.

Mr. Stillwell, can you stand?

Have you seen a copy of the indictment?

DEFENDANT STILWELL: Yes, ma'am.

THE COURT: Have you discussed it with your attorney?

DEFENDANT STILWELL: Yes, ma'am.

THE COURT: Would you like me to read it out loud or do you waive the public reading?

DEFENDANT STILWELL: Waive it.

THE COURT: How do you plead to the charges?

DEFENDANT STILWELL: Not guilty.

THE COURT: You may be seated.

Now, why don't we turn to the letters rogatory.

I understand that the government does not object to Mr. Samia's request to submit a letter to Philippines office court administrator requesting clarification of its denial of the letters rogatory.

The government has also indicated that the State Department would be willing to transmit the letter to the U.S. Embassy in Manila on Mr. Samia's behalf, but that this process would take longer.

So, Mr. Stern, what is your position? How do you wish to proceed? Would you rather send the letter yourself, send it through the State Department? I'll tell you, I don't intend to put off the April 2 trial. So timing is important, but ultimately how you want to proceed is up to you.

MR. STERN: I think what we hope to do is have our lawyer in the Philippines bring it to their government there. I think that the letter from the Philippines was a real misunderstanding of what we had requested. You know, the letters rogatory don't ask for all the things they say they can't provide.

All we want them to do is serve process. So our lawyer in the Philippines will go to wherever he needs to in the Philippines and find out how to serve it, and not circumvent the State Department because they obviously know what's going on, but avoid the lengthy process of going through the State Department. Simultaneously, we will ask the State Department to serve it so in case the Philippine government won't accept it that way, we have it in process through the State Department.

THE COURT: All right. I'm going to ask you to do

that as soon as you can. Let me know if there is anything you want me to do again as soon as you can, so we move this forward promptly.

MR. STERN: The only thing we want you to do is the letter I think needs to come under your signature. The initial letter was really a letter from Judge Swain, although we drafted it. This letter, I think to comply with the rules, has to also be a letter from a federal district judge because it's one government asking another government to do something, so it can't be from an individual.

THE COURT: OK. I had thought in your letter you had said something to the effect that it would be -- that I would either authorize it or sign it.

MR. STERN: I think that would have the same effect.

THE COURT: So what does that mean? Does that mean it needs to come under my signature? I will authorize it, so I'll tell you that. I'm happy to do that. I'm happy to issue an order authorizing it, but if you need me to do something else like put it on my stationery, issue an order authorizing it and attaching your letter, you tell me what form you want it to be in, and I'll do it today.

MR. STERN: Can I have two minutes to talk to the government?

THE COURT: Sure, absolutely.

(Pause)

MR. STERN: Judge, I think an order from you authorizing that letter will be sufficient. I don't think any of us -- I haven't done this before, but I think that should do the trick, and then I will try, as I said, to do it both through the State Department and through our representative in the Philippines.

THE COURT: I'll do that today. It will be on the docket. If you need anything else from me, let me know as soon as possible.

MR. STERN: I will get it out today.

THE COURT: OK. Thank you.

MR. STERN: Thank you.

THE COURT: I understand that three of the six witnesses named in the letter rogatory have already agreed to testify. Is that right?

MR. EGAN: Yes, that is correct. And we continue to work on the other witnesses. It is still our hope to have them here voluntarily, and we are still working on that as well.

THE COURT: Good. Thank you.

MR. STERN: Judge, just to be clear, I think that if the letters rogatory are ultimately authorized, we intend to depose those people because they can't be made to come here as far as I know. And if at the last minute they decided not to come, we don't want to be in a position of not having their testimony.

So it's our position that whether they've agreed to come or not is irrelevant to the process that's going on with the letters rogatory because if they are not here, if they chose at the last minute not to come, we don't want to be without their testimony.

THE COURT: What's the government's position on that?

MR. EGAN: Your Honor, I think we would need to revisit that as we find the situations if the letters rogatory are authorized, because at the end of the day if at the time they are authorized we have all people willing to come, the government's position is that the Rule 15 requirements of unavailability will not have been met, and there would be no basis to require a deposition.

We recognize that those things can change, but hopefully at the time -- if the letters rogatory are granted hopefully by that time we will be able to have a fuller sense of sort of how firm we are that these witnesses are going to be here.

With respect to the three, I would say we are very confident that they are going to be here, recognizing that things can change both in their own mind, in their lives and things like that, but we are very confident they will be here.

So I think that is a question that we'd probably like to revisit at the time that the letters rogatory are granted, if they are granted, because our position would be if at that

time all of these people are willing to come, our preferences for live testimony in court and our position is that the Rule 15 elements would not have been met because they are available.

THE COURT: In any event, keep me posted, and as soon as you have any additional information, or this issue comes to a head, let me know OK.

MR. EGAN: Will do.

THE COURT: Mr. Ray.

MR. RAY: My only interest in this is to avoid delay that would potentially impact the trial date. I will say that's all well and good from the government except there is a history in this case, and it has gone back and forth now several times as to whether they are willing to come or whether they're not willing to come.

The concern is here, remember, there's going to have to be travel to the Philippines to accomplish this if there is going to be a letters rogatory process in the Philippines. That means the government has got to go, presumably all the lawyers have to go because we have a right to confront and cross-examine those witnesses even to the extent they are more specifically related to Mr. Samia's defense.

So this is November. A last minute decision about, "oh, wait a minute, one or more of these witnesses is not going to voluntarily come to the United States" is not going to allow for the completion of testimony in the Philippines on what

would amount to a moment's notice. This is a big operation to engineer testimony in a foreign country with all of the parties except for the defendants present.

THE COURT: Look, we're going to continue working on both tracks. There has already been a response to the letters rogatory. I understand defendant's position that the folks in the Philippines misunderstood the request. That may be true. That may not be true. But we are going to keep working on both tracks, and we are going to try as hard as we can to move that process along as quickly as we can, and get all of the witnesses here if possible.

Now I want to turn to the outstanding motions in limine. I reviewed your submissions. I am ready to rule. If there is any issue you want to be heard on beyond your papers let me know, and I promise I will keep an open mind. If not, I will just move through them.

I've decided to rule orally. I think it is more efficient. I know it can be a little tedious to sit and listen to an oral ruling, but I think it is the most efficient way of moving things forward.

So, I'm going to start with Mr. Stillwell's statement. As I understand it, the government at this point does not intend to introduce a transcript or recording of Mr. Stillwell's post-arrest statement, but rather to introduce his statement through the oral testimony of law enforcement

agents. Is that correct?

MR. EGAN: That's correct.

THE COURT: Portions of that testimony. All right.

Mr. Stillwell argues that if the government introduces his post-arrest statement through oral testimony of law enforcement agents, he should be permitted to introduce or require the government to introduce a redacted transcript of his complete statement or at least specified portions thereof. If neither side wishes to be heard, I will rule, which I'm prepared to do.

So the parties do not appear to dispute that Mr. Stillwell's post-arrest statement is hearsay if he offers it for its truth. In general, when a defendant seeks to introduce his own prior statements for the truth of the matter asserted, it is hearsay, and it is not admissible. That's from the *Marin* case 669 F.2d at 84. Nonetheless, a defendant may introduce his own out-of-court statement for its truth if it falls within a hearsay exception or is otherwise admissible.

See, for example, Judge Marrero's decision in the *Blake* case, 195 F.Supp.3d at 610. In this case, Mr. Stillwell argues that a transcript of his complete post-arrest statement, or at least portions of it, should be admitted under the rule of completeness, the residual hearsay exception or the Best Evidence Rule. I don't find any of these arguments persuasive.

I will begin with the Rule of completeness.

Rule 106 provides that: "If a party introduces one or part of a writing or recorded statement, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement that in fairness ought to be considered at the same time. Under this principle, even though a statement may be hearsay, an omitted portion of the statement must be placed in evidence if necessary to explain the admitted portion, to place the admitted portion in context, to avoid misleading the jury or to ensure fair and impartial understanding of the admitted portion." That's from the *Johnson* case, 507 F. 3d at 796; see also *Castro*, 813 F. 3d, 575-76.

"The completeness doctrine does not, however, require the admission of portions of a statement that are neither explanatory of nor relevant to the admitted passages." That's from *Johnson*, 507 F.3d at 796.

I will also note that while Rule 106 refers only to "writings" and "recorded statements," the Second Circuit has explained that "Federal Rule of evidence 611(a) renders it substantially applicable to oral testimony," such as the agents' testimony that the government seeks to elicit at trial. Again, from *Johnson* 796 at footnote 2; see also the *Mussaleen* case, 35 F.3d at 696. Thus, when I discuss the rule of completeness and the context of oral testimony, I'm referring to the principles of Rule 106 as applied through 611(a).

So, in this case the rule of completeness does not require the admission of additional portions of Mr. Stillwell's post-arrest statement. In support of his rule of completeness argument, Mr. Stillwell focuses on the government's proposed use of four portions of his post-arrest statement: (1) that he informed agents that he traveled to the Philippines in late 2011 or 2012; that he said he met someone he knew as "Fernando" in the Philippines; that the Howzat Bar "sounded familiar," and that he ate there with his travel companion "quite a bit," and (4) that he stayed in the Philippines for approximately one month.

None of the additional portions Mr. Stillwell seeks to introduce, however, are necessary to explain or contextualize the statements the government seeks to use. For example, Mr. Stillwell's statement that he did not know what he was "going over to the Philippines for" is not necessary to explain that he did in fact travel to the Philippines. Similarly, the fact that he did not interact with Fernando to a "great extent" or that he did not have a conversation with Fernando about whether the trip would "be taken care of" before he left for the Philippines is not essential to explaining the basic fact that he met Fernando once he arrived in the Philippines. Thus, Mr. Stillwell has not demonstrated that additional portions of his post-arrest statement must be admitted under the rule of completeness.

See, for example, *Hill*, 658 F. App'x 604-05; the *Gonzalez* case, 399 F. App'x 645; *Johnson*, 796-97; or the *Blake* case, 195 F.Supp. 3d 610-11.

Now the residual hearsay exception.

"A hearsay statement may be admissible under Rule 807 if it is particularly trustworthy; it bears on a material fact; it is the most probative evidence addressing that fact; its admission is consistent with the rules of evidence and advances the interests of justice; and its proffer follows adequate notice to the adverse party." That's from the *Ulbricht* case, 858 F.3d at 123. "The residual hearsay exception will be used very rarely and only in exceptional circumstances."

In this case, Mr. Stillwell has failed to show that the statements he seeks to introduce are "particularly trustworthy." In evaluating the trustworthiness of a statement under 807, courts generally consider the risks associated with hearsay more generally including "insincerity, faulty perception, faulty memory and faulty narration." See *the Schering* case, 189 F. 3d at 232. In this case, the risk of insincerity is significant. Mr. Stillwell was speaking to law enforcement agents, and he had a clear incentive to minimize his role in the murder of Catherine Lee. While I don't have any reason to believe that Mr. Stillwell knew of the jurisdictional issues related to the crime for which he was a suspect, a reasonable person in his position would have been

motivated to argue that the murder was not premeditated, which he arguably did by stating that he did not know what he was "going over to the Philippines for." He also may well have been motivated to downplay any association with Mr. Hunter which he arguably did by stating that he did not interact with Fernando "to a great extent."

Now, I recognize that Mr. Stillwell made the earlier statement after he had already admitted to being present in the van when Mr. Samia allegedly shot Ms. Lee, which could suggest that this statement is more likely to be reliable. In context, however, it's clear that Mr. Stillwell made this statement while trying to extract a "deal" from the FBI agents and to "minimize" time in prison." See page 25 of the transcript. Thus, despite making a partial confession, Mr. Stillwell may have nonetheless been motivated to claim that he did not know what he was getting into and that - in his words - the situation "dropped" on him. Page 27 transcript.

Although I ultimately cannot weigh in on the truth of Mr. Stillwell's statements as to whether he did or did not know what he was going over to the Philippines for, I cannot find that these statements are "particularly trustworthy." See, for example, *Ulbricht* 858 F.3d at 123; the *Lowe* case, 664 F. App'x at 41-42 and *cf. Morgan*, 385 F.3d at 209.

Accordingly, the portions of Mr. Stillwell's statement that he seeks to interest dust are not admissible under Rule

807.

Mr. Stillwell also invokes the Best Evidence Rule under Rule 1002, "an original writing, recording or photograph is required in order to prove its content unless the Federal Rules of Evidence or a federal statute provides otherwise." As the parties appear to agree, however, a transcript is not evidence but rather an aid that a jury may use in listening to a recording. See, for example, the *Rosa* case, 17 F.3d at 1548. Thus, the Best Evidence Rule does not apply to the transcript of Mr. Stillwell's statement and provides no basis for requiring its introduction.

I will note for the record that Mr. Stillwell does not claim that the recording of his statement as opposed to the transcript must be introduced under the Best Evidence Rule as he appears to agree with the government that the use of the recording would raise *Bruton* issues that likely could not be resolved.

In sum, I don't believe that the rule of completeness, the residual hearsay exception, or Best Evidence Rule provide a sufficient basis for granting Mr. Stillwell's request to admit the additional portions of his post-arrest statement.

Mr. Stillwell has also argued that he's entitled to introduce specified portions of his post-arrest statement as impeachment evidence during cross-examination of the agents.

After reading his letter, I fail to see how the portions of his post-arrest statement are relevant in assessing the agent's credibility, and I agree with the government that the use of these statements for impeachment purposes is akin to an end-run around the rule against hearsay.

MR. RAY: Your Honor, on that point, if I may, because I think it is going to -- I would ask your Honor to think about that when we actually --

THE COURT: Walk me through your argument.

MR. RAY: -- when we actually get to the testimony of the agents. But the agents didn't ask this question by accident. They full well knew the significance of the jurisdictional issue. Moreover, the same question was asked of LeRoux, which is why we argued, since his answer was consistent with my client's statement, that it was unlikely that either Mr. Samia or Mr. -- well, particularly Mr. Stillwell, knew the purpose of the trip to the Philippines before they left the United States.

You've ruled on that, I understand that, but in the context of the agent's testimony, while I may not be able to elicit consistent with your Honor's ruling what Mr. Stillwell said in response, I absolutely believe I should be able to impeach the agent's testimony with regard to their investigation relative to the question that they asked Mr. Stillwell, i.e., whether he knew beforehand what the

purpose of the trip to the Philippines was.

THE COURT: Why does that bear on their credibility?

MR. RAY: Because one of the questions is obviously going to be: What evidence do you have of the fact that Mr. Stillwell knew? That's why you asked the question. What else did you do after that when you got his answer to determine whether or not Mr. Stillwell in fact did know before he left. That's part of the agent's investigation.

I am certainly entitled to ask about what steps they took as a result of that question and whatever the defendant's response was. And if I can't get the response in, I can certainly ask about what evidence was gathered thereafter that pointed in the direction of proof that Mr. Stillwell knew before he left for the Philippines why he was going to the Philippines to accomplish what ultimately transpired.

THE COURT: But bearing on credibility, are you trying to question why the government charged him and how they could charge him? I understand that you can argue to the jury that there is no proof that he knew going forward, right?

MR. RAY: Sure.

THE COURT: Or argue to me on a motion. But why does that bear on the credibility of the agents, which is what I thought your argument was from your --

MR. RAY: Well, it's genuine impeachment with regard to the government's investigation. The vehicle to do that is

agent testimony. I can't impeach the government's investigation in a vacuum, but I can certainly ask questions of the agents as to what they did and didn't do as a result of evidence gathered during that investigation including the point at which, as the investigation continued, they had information from Mr. Stillwell, they asked a relevant question that was material to the case. And I can seek to elicit what steps they took after they got Mr. Stillwell's answer without eliciting what the answer was about what they did and didn't do thereafter.

That's all part of the investigation. That's proper impeachment of agent testimony. And the agent's investigation. What else did you do? If the answer is "nothing," maybe I don't have any more questions, but I can certainly ask as a result of asking this, "Did you ask Mr. Stillwell whether or not he knew before he left for the Philippines?" And the answer. Is the government is going to object to that question? I can ask that question, "did you ask him." I'm not asking what the answer was. I'm asking: "Did you ask the question? Isn't it true you asked Mr. Stillwell this question? And you got an answer, didn't you? And after you got that answer, what steps did you take?"

That's proper cross-examination.

THE COURT: All right. I'm happy to hear the government on this now or at trial.

MR. EGAN: I mean, we would object at trial. I think we agree with the Court that this does not bear on the agent's credibility. I don't think that the only way that one can challenge the government's investigation is through questioning of the agents. Indeed, I expect the entire defense is going to be in one way or the other questioning whether the evidence we say is there is there that establishes that Mr. Stillwell was there. In terms of the steps they took after this, Mr. Stillwell was indicted already at the time that they were having this question.

Second of all, asking "did you ask this question, now don't say the answer" is simply going to invite speculation by the jury. It is simply unnecessary. He can ask all the questions in terms of "what evidence do you have that he was in the country? Were you able to establish this?" If he sees a piece of evidence that is representing that point, he can certainly question that evidence, but the actual did they ask this question and what was the answer even if it is not said, I think the government's position is that's inappropriate and not necessary. It can be established in all sorts of ways if that's the avenue that he wants to take.

THE COURT: Yes, I have to say I'm inclined to agree on that.

MR. RAY: Well, I will just say I find it hard to believe the government is making the argument here that the

investigation ended as a result of the indictment, so that can't be.

THE COURT: No, I think Mr. Egan just acknowledged that you can ask questions about what they did. I think the objection is to the question without the answer, with the goal, of course, of leaving in the jury's mind that he answered no.

MR. RAY: But I'm not asking him what the answer was. I'm entitled to ask the agent if they found it significant enough to ask the question.

THE COURT: What does it matter if they asked the question or didn't ask the question?

MR. RAY: It's an investigation.

THE COURT: What you're trying to get in is what information they have obtained during this investigation.

MR. RAY: Well, I mean, I think everybody seems to concede I can ask the questions right after that which would be, "what steps did you take, if any, after indictment to determine whether or not Mr. Stillwell knew before he left for the Philippines about what he was being asked to do?" So the only objection -- there doesn't seem objection to that. I can ask those questions. Unless the government seriously is contending that the investigation stopped at the point of the indictment, which clearly it didn't. Here we are two and a half years later with a brand new defendant in the case. So that can't be the answer. So I can ask those questions. I

can't elicit the answer. And so the question now is I can't ask the question of the agents as to what would have precipitated, it seems to me, reasonable investigation following an answer irrespective of what the answer was.

Either he answered no, in which case you would logically think you would want to seek proof to that issue, or he answered yes, and the answer is then there's no reason for further investigation. I think the jury is entitled to know what the government did after it got the answer without eliciting the answer.

THE COURT: I don't think it would be proper to ask the question knowing that the answer can't come in, but I do think it's proper, and the government appears to agree, to ask questions about what the government did during its investigation, whether it's post indictment or pre-indictment, to determine that he knew what he was going to do before he went to the Philippines.

MR. RAY: I just probably should note here, since it's important and significant, the defendant's objection to that ruling. In other words I, want to preserve the record with regard to that objection.

THE COURT: Understood. If there are any cases you want me to read on that, if there is anything on that particular point that you haven't briefed already that you want me to look at, I'm happy to do that.

MR. RAY: I appreciate it very much, your Honor. I'm just asking the Court to keep, as I'm sure you will, an open mind. And again, I don't know quite how the testimony is going to come in. In part, it may depend what doors are opened as a result of --

THE COURT: I understand.

MR. RAY: -- what testimony is elicited on either direct or cross-examination. I appreciate the opportunity. Obviously, I will be, I think, seeking an opportunity to brief that issue in sufficient time that your Honor can consider it before the witness takes the stand.

THE COURT: I'm happy to do that.

MR. RAY: All right. Thank you.

THE COURT: Sure. Before moving on from Mr. Stillwell's statement, I want to address *Bruton*. I know we litigated some of the *Bruton* issues already, but now we are in a slightly different place because Mr. Stillwell's testimony, or portions of it, are coming in only through agent testimony. The statements will still, of course, comply with *Bruton*, and I don't think there is anything else we need to talk about with respect to that. We will get to Mr. Hunter's statement in a moment, but let me know if you disagree.

MR. RAY: Well, just so it's clear, there are going to be -- I don't have it in front of me at the moment, but there is obviously references to Mr. Hunter, either directly or

indirectly, in Mr. Stillwell's statement.

THE COURT: Well, that is what I was going to say next. What I was going to say next is what I think we need to do in light of the addition of Mr. Hunter to the case is to take a close look at all of the statements and see if anything needs to be *Bruton*-ized in a different fashion to account for the fact that he is now a defendant in this case and will be on trial.

I want to do everything as far in advance of trial as we can. So I'm going to ask you, anything we can brief earlier rather than later, I'm just going to ask you to do that.

How does the government intend to introduce the statements of Mr. -- is it Mr. Samia or Samia?

DEFENDANT SAMIA: Samia.

THE COURT: Samia.

How does the government intend to introduce the statements of Mr. Samia and Mr. Hunter?

MR. EGAN: I think agent testimony, the same way. I mean, we will -- Mr. Samia's testimony, I mean statement, I think presents less of the issues with a video, but I think still there are problematic issues with the video so our current intention would be to do it through agent testimony.

THE COURT: I want you to do the same thing you ave have done on Mr. Stillwell, give a bullet point list of questions or proposed answers or testimony and *Bruton*-ized in a

way that you think it should be and give it to defense counsel so that if there needs to be any litigation on this issue, we can do it well in advance of trial, OK?

MR. EGAN: Surely.

THE COURT: Thank you.

Now, I will address the government's request to introduce statements from David Smith and John O'Donoghue.

My understanding is that the government seeks to introduce the following statements: With respect to David Smith, the government seeks to elicit testimony from a confidential witness who I will refer to as "CW-1" who told him, among other things, Mr. Samia was interested in performing "security work;" that Mr. Samia asked to perform "wet work," which apparently refers to assassinations, and that in 2008 Mr. Samia guarded safehouses in Africa on behalf of the Organization.

With respect to John O'Donoghue, the government seeks to elicit testimony from CW-1 that Donahue told him about a "mission" Mr. Samia performed in 2008 in which O'Donoghue and Samia performed surveillance on a man in Papua New Guinea.

Is that right, that's the entirety of the statements from Mr. Smith and Donahue?

MR. EGAN: That's correct, your Honor.

THE COURT: As third-party statements, these do raise hearsay concerns. The government argues, however, they are

admissible either as co-conspirator statements under Rule 801(d)(2)(E) or as statements against penal interest under Rule 804(b)(3). Mr. Samia and Mr. Stillwell oppose this request and argue that even if either of these hearsay exclusions or exceptions applies, the statements should be excluded under Rule 403.

I will begin with the government's argument that the statements are non-hearsay statements of co-conspirators under Rule 801(d)(2)(E). This rule provides that a statement is not hearsay if it is "made by a party's co-conspirator during and in furtherance of the conspiracy." A statement may be admitted under this rule if the government establishes by a preponderance of the evidence: "(A) that there was a conspiracy; (B) that its members included the declarant and the party against whom the statement is offered; and (C) that the statement was made during the course of and in furtherance of the conspiracy." That's from the *Gupta* case, 747 F. 3d at 123. "The conspiracy between the declarant and the defendant need not be identical to any conspiracy that is specifically charged in the indictment." That's from the *Russo* case, 302 F. 3d at 46, footnote 3. However, the "conspiratorial objective being furthered by the declarant's statement must in fact be the objective of a conspiracy between the defendant and the declarant." *Id.* at 45; see also the *Coppola* case, 671 F. 3d at 246. There is "no requirement that the person to whom the

statement is made also be a member" of the conspiracy. That's from *Gupta*, 747 F. 3d at 124.

Statements are "in furtherance of the conspiracy" if they have "been designed promote or facilitate achievement of the goals of the ongoing conspiracy." That's from the *James* case, 712 F.3d at 106. Statements meet this standard if, for example, they are designed to inform co-conspirators of the progress or current status of the conspiracy or to inform co-conspirators of the identities of other members of the conspiracy. See, for example, *Id.* at 106; *Russo*, 302 F. 3d at 46-47; or the *Rahme* case, 813, F. 3d at 35-36.

In this, case the statements of David Smith and John O'Donoghue to CW-1 are indeed statements of co-conspirators. First, I find that there was a conspiracy. The conspiracy encompassed what defendants at times labeled "security work" which included, among other things, assassinations, guarding safehouses and other assets, and purchasing and smuggling goods on behalf of the Organization in exchange for salaries and bonus payments. Specific examples of this conspiracy's alleged activities include, among other things, guarding safehouses in Africa, performing surveillance in Papua New Guinea, and, of course, murdering Catherine Lee in the Philippines.

Second, the conspiracy's members included defendants and both Smith and O'Donoghue. The government has shown that

Smith and O'Donoghue were members of this conspiracy at the time they made the statements at issue. There is no dispute that Smith was the head of the Organization's security team from 2008 to 2010, and that O'Donoghue was the security team's head of logistics. In these positions, Smith and O'Donoghue engaged in a variety of activities, including assassinations which they termed "ninja work," "bonus jobs," or "black tasks." The government has also established that defendants were members of this conspiracy.

Joseph Hunter was hired by Smith and O'Donoghue and eventually served as head of the security team and arranged for the murders of multiple people on behalf of the Organization. Mr. Samia joined the security team in 2008 and engaged in several of the team's activities including guarding safehouses in Africa and performing surveillance in Papua New Guinea. Mr. Samia also expressed interest in performing "wet work," meaning assassinations for the security team. Finally, Mr. Stillwell joined the security team in 2011 when he was recruited by Mr. Samia to perform "bonus work" for the team. Thus, the three defendants and two declarants in this case were all members of the same conspiracy.

Finally, the statements of Smith and O'Donoghue were made during the course of and in furtherance of the conspiracy. Smith's statements to CW-1, who was also a member of the security team at the time, were designed to apprise him of the

security team's membership, by explaining that Mr. Samia had expressed interest in the security team and had asked to engage in assassinations. See, for example, the *Russo case*, 302 F. 3d 46-47, or the *Roldan-Zapata* case, 916 F.2d at 803. Smith's statements to CW-1 also served to update CW-1 on the conspiracy's activities by explaining that the security team had guarded safehouses in Africa. See, for example, the *James* case, 712 F. 3d at 106. O'Donoghue's statements were likewise designed to update CW-1 on the status of the conspiracy, as he described the security team's alleged surveillance of the target in Papua New Guinea and Paul LeRoux's order to assassinate the targets. Therefore, I find the statements of Smith and O'Donoghue were made in furtherance of the conspiracy.

Defendants have argued that the statements are not co-conspirator statements for two reasons: First, Mr. Samia and Mr. Stillwell argue that the only "conspiracy" they may have joined was the conspiracy to murder Catherine Lee, which involved neither Smith nor O'Donoghue. I don't find this argument persuasive. The operative indictment in this case alleges Mr. Samia and Mr. Stillwell were engaged in a broader conspiracy as members of the security team. Indeed, the indictment alleges that Catherine Lee was only "one of their intended victims." That's from paragraph two of the tenth superseding indictment. In addition, the indictment quotes an

email from Mr. Hunter to Mr. Samia in which he says that Mr. Samia and Mr. Stillwell "signed up for a job" and "said they wanted the job" with the security team a year before the plans to kill Catherine Lee were formed. Paragraph 9(ee) of the indictment. Furthermore, the evidence, including the statements of Smith and O'Donoghue, demonstrates that Mr. Samia participated in several activities other than Lee's murder, including guarding safehouses in Africa and conducting surveillance in Papua New Guinea as a member of the security team. In any event, the law is clear that under Rule 801(d)(2)(E)," the conspiracy between the declarant and the defendant need not be identical to any conspiracy that is specifically charged in the indictment." *Russo,* 302 F. 3d, 46 footnote 3. Thus, by joining the security team, Mr. Samia and Mr. Stillwell became members of a conspiracy that extended beyond the murder of Catherine Lee and included both Smith and O'Donoghue.

Second, Mr. Stillwell argues that the statements of Smith and O'Donoghue are not co-conspirator statements because they were made before he joined the security team. It is settled law, however, that "where statements are made in the course of an existing conspiracy in which the defendant later joins, those statements may be admitted against him even though he was not a member of the conspiracy at the time the statements were made." That's from the *Farhane* case, 634 F.3d

at 161, footnote 35; also the *Badalamenti* case, 794 F.2d at 828; see also *Weinstein's Federal Evidence*, Section 801.34. Accordingly, the statements of Smith and O'Donoghue may be admitted against Mr. Stillwell as co-conspirator statements notwithstanding the fact that these statements were made before he joined the conspiracy.

In sum, I'm granting the government's request to introduce the statements of Smith and O'Donoghue as statements of co-conspirators pursuant to Rule 801(d)(2)(E)

MR. KIRTON: Your Honor, Mr. Hunter wants new counsel. I just found this out this morning. We met last week on the 25th in this building. We met yesterday at the MDC with my associate, Ms. Ferrone. This is the first I'm hearing of this. I hate to interrupt this process, but it may make sense for the Court to have standby counsel available today so we could work through these issues and resolve the counsel issue today.

THE COURT: Look, why don't we do this: Since all of these motions were Mr. Samia's and Mr. Stillwell's, what I'm going to do is my deputy will call down and ask for the CJA attorney on duty to come up and meet with Mr. Hunter, but I am going to continue reading my rulings.

You don't have any objection to that?

MR. KIRTON: No, no objection.

THE COURT: I'm just going to tell Mr. Hunter now.

Mr. Hunter, is that correct, are you seeking another

attorney?

DEFENDANT HUNTER: Yes, your Honor.

THE COURT: I will tell you now I'm go only going to appoint an attorney who can try this case on April 2. I'm not going to adjourn the trial. Whoever is on duty, you don't have your choice of counsel if it's appointed by the government, but I will give you one opportunity to get another attorney as long as that attorney can meet the deadlines that I've set.

DEFENDANT HUNTER: Your Honor, I also requested Ms. Ferrone remain as a co-counsel or my counsel.

THE COURT: Is she your associate, Mr. Kirton?

MR. KIRTON: I made an application this morning to have her appointed as associate counsel, which was granted by the Court.

THE COURT: Yes.

MR. KIRTON: So she is actually on the case as of today, but she is not my associate in my office.

THE COURT: All right. I never had that particular request. I don't know, Ms. Ferrone, if you have an opinion about that.

MS. FERRONE: I'm happy to stay on the case. I'm not on the panel, so my guess is we are going to have to see who standby counsel is probably to some extent.

THE COURT: It is dependent on what their view is.

Mr. Hunter, I'm going to consider your request, but

first I'm going to see who is on duty and see what their position is, OK?

(Defendant indicating)

THE COURT: Because Ms. Ferrone is not on the CJA panel. I'm going to continue now with my rulings, and we will address this issue as soon as the attorney can come up.

In the alternative, the statements of Smith and O'Donoghue may be admitted as statements against penal interest under Rule 804(b)(3).

"To invoke Rule 804(b)(3) exception for a statement against interest, the proponent of the statement must show (1) that the declarant is unavailable as a witness; (2) that the statement is sufficiently reliable to warrant an inference that a reasonable man in the declarant's position would not have made the statement unless he believed it to be true; and (3) that corroborating circumstances clearly indicate the trustworthiness of the statement." That's from the *Ulbricht* case, 858 F.3d at 122. "The exception applies only if the district court determines that a reasonable person in declarant's shoes would perceive the statement as detrimental to his or other her own penal interest. A statement will satisfy Rule 804(b)(3)'s requirement that it 'tended' to subject the declarant to criminal liability if it would be probative in a trial against the declarant." That's from the *Persico* case, 645 F. 3d 102. "The Rule does not require that

the declarant be aware of the incriminating statement subjects him to immediate criminal prosecution." *Id.*; see also the *Dupree* case, 870 F. 3d at 80. The scope of Rule 804(b)(3) has been circumscribed by the Supreme Court's decision in the *Williamson* case, which held that the Rule "does not allow the admission of non-self-inculpatory statements, even if they are made within a broader narrative that is generally self-inculpatory." That's 512 U.S. at 600-01; see also the *Wexler* case, 522 F.3d at 203; the *Jackson* case, 335 F.3d at 179; or the *Sasso* case, 59 F.3d at 349.

In this case, there is no dispute that Smith and O'Donoghue are unavailable. Smith is dead, and Donahue's whereabouts are unknown.

The government has also shown that a reasonable person in the shoes of Smith or O'Donoghue would perceive their statements as detrimental to their penal interests.

I'll begin with Smith's statements. According to the government, submit told CW-1 that Mr. Samia asked him for "wet work," meaning assassinations; that Smith did not assign Samia any "wet work" --

One moment.

We have an attorney by the name of David Greenfield who is coming here now. He is across the street, and he can meet with Mr. Hunter at the end of this proceeding. All right?

"That Smith did not assign Samia any "wet work," and

that Mr. Samia had "worked for the Organization guarding safehouses in Africa." I recognize that these statements may not be sufficient standing alone to immediately subject Smith to criminal liability. They would, however, at least be "probative" in a criminal trial against Smith. Smith's statements suggest at a minimum that he was aware that the Organization performed assassinations; that he had the authority to assign "wet work" or assassinations to those who were interested; and that he had knowledge of the locations of the Organization's "safehouses," a term that is commonly associated with criminal enterprises. I also recognize that these statements do refer to the activities of a non-declarant, Mr. Samia, which raises the possibility that portions of the statements could be non-self-inculpatory under *Williamson*. Nonetheless, I find that these statements are indeed self-inculpatory in that they tend to show Smith's own position of authority within a criminal conspiracy and demonstrate his personal knowledge of the conspiracy's activities, including its assassinations and the location of its safehouses. Viewed in the context of this case, Smith's statements are against his own penal interest even if they implicate other individuals. I will cite for that proposition Justice Scalia's concurrence in *Williamson*, 512 U.S. 606-07; or the Sixth Circuit's decision in *Tocco*, 200 F. 3d 401, 415.

Viewed from the perspective of a reasonable person,

O'Donoghue's statements are also against his penal interests. O'Donoghue stated that he and Samia performed "surveillance" on a "target" using high-powered rifles outfitted with long-range scopes. O'Donoghue also stated that he was given instructions to assassinate the target. To be sure, these statements, like Smith's statements, may not immediately subject O'Donoghue to criminal liability. O'Donoghue also stated that he and Samia did not ultimately perform any assassination and that he subsequently left the security team. Nonetheless, his statements plainly suggest that he had knowledge of the Organization's criminal activities and that he agreed to participate in some of these activities, possibly including assassinations, using powerful weapons. A reasonable person in O'Donoghue's position would not have made these statements unless he believed them to be true.

Third, corroborating circumstances clearly indicate the trustworthiness of these statements. Smith and O'Donoghue made these statements to a fellow member of the criminal organization whom they had no incentive to deceive. Moreover, Smith and O'Donoghue did not minimize their own culpability in these statements. In addition, other evidence further corroborates the statements. For example, consistent with Smith's statement, Mr. Samia testified that Smith hired him to perform asset security work in Africa in or about 2010. Therefore, I find that the circumstances surrounding these

statements clearly indicate that they are trustworthy.

In sum, I find that the government may introduce statements of Smith and O'Donoghue to CW-1 either as statements of co-conspirators under Rule 801(d)(2)(E) or statements against penal interest under Rule 804(b)(3).

Mr. Samia and Mr. Stillwell also argue that even if the rule against hearsay does not bar the government from introducing these statements, they should be excluded under 403. I disagree.

Under Rule 403, a district court may exclude relevant evidence if its probative value is substantially outweighed by, among other things, the danger of unfair prejudice. In this case, the statements of Smith and O'Donoghue are plainly relevant to the charged crimes. They serve to demonstrate the security team engaged in assassinations outside the United States, which were ordered by Paul LeRoux to the head of the security team, who then assigned these assassinations to other members of the team. They also show that the security team's work required some familiarity with firearms, which is of course one reason the government claims that Mr. Samia and Stillwell were hired. And while these statements may be prejudicial insofar as they may reference uncharged crimes, I don't believe that any prejudice would be unfair. In particular, the activities described are not any more sensational or inflammatory than the crimes for which the

defendants are charged. In light of the risk of prejudice, however, I will provide a limiting instruction if one is proposed regarding the inferences the jury may draw from these statements. Under these circumstances and with the understanding that again I'm willing to provide a limiting instruction to the jury, I don't find it appropriate to exclude the statements of Smith or O'Donoghue under 403. See, for example, the *Abu-Jihad* case, 630 F. 3d at 132-33 or the *Mercado* case, 573 F. 3d at 142.

With respect to limiting instructions, if there are any limiting instructions you want me to give at trial, please give them to me beforehand. Show them to opposing counsel. See if there is any objection. If not, I want to make sure we have time to formulate the language.

Yes?

MR. STERN: Judge, can I raise one issue about this? And it really is more by way of a heads-up to you than anything else; that it's going to be our position that we are entitled to impeach Mr. O'Donoghue and Mr. Smith as if they were testifying under the Rules of Evidence, and that we are going to ask you to direct the government to give us any impeachment material they have about those two witnesses. We are going to do it in writing, but I am telling you now that that is our position that the Rules of Evidence allow us to impeach them. If the government has impeachment material from whatever

source, from Mr. LeRoux or whomever, we are entitled to that material if it in any way is about their character, their honesty, these specific incidents, whatever.

THE COURT: All right. So we will set a schedule at the end for any additional briefing on issues, but I expect the government to respond on that in advance. I'm glad you told me. It's good to know.

MR. RAY: Just so it is clear, I will abide by the Court's ruling to resolve the issue in advance, but just to signal that it is our intention to request a limiting instruction with regard particularly to this evidence that Mr. Stillwell wasn't, as everyone acknowledges, alleged to be a member of the conspiracy yet, so there has to be, it seems to me, some cautionary language to the jury.

THE COURT: I'm happy to give that. I want to make sure we have the time to finesse the particular language.

Now I will address the government's request to allow testimony regarding Catherine Lee's statements on the day of her death. This request is unopposed, and I'm going to grant it.

The government states that it seeks to introduce testimony from Real Estate Agent-1 that on the day she died, Catherine Lee stated she intended to ride with "Tony" and "Bill Maxwell" to Las Pinas in the Philippines. According to the government, the names "Tony" and "Bill Maxwell" were pseudonyms

for Mr. Samia and Mr. Stillwell, respectively.

The government argues this statement made out of court by a third party falls within the "state of mind" exception to the rule against hearsay under Rule 803(3), a declarant's then existing state of mind, such as "motive, intent or plan" is not excluded by the rule against hearsay. "Thus, if relevant a declarant's statement of his intent may be introduced to prove that the declarant thereafter acted in accordance with the stated intent." That's from the *Persico* case, 645 F. 3d 100; see also, for example, the *Cicale* case, 691 F.2d at 103, or *the Hillmon* case, 145 U.S. 299-300. The Second Circuit has cautioned, however, that a declarant's statement of intent should be admitted only to prove her own future conduct and not the future conduct of another person, at least in the absence of any "independent evidence" that the other person engaged in the conduct the declarant described. See the *Delvecchio* case, 816 F.2d at 863; see also 1974 Advisory Committee Notes to Rule 803.

Consistent with this precedent, Lee's statements that she intended to ride with two men who identified themselves as Tony and Bill Maxwell may be introduced to show that she acted in accordance with this stated intent. This fact is relevant because it tends to support the government's theory that Lee did in fact join two men, whom the government claims were Mr. Samia and Mr. Stillwell, in the vehicle in which she was

ultimately killed. See, for example, the *Persico* case, 645 F. 3d 101. While the distinction may be a fine one, I will note that the government seeks to introduce this evidence to show Lee's own conduct -- that she went for a ride with the two men as she intended to do -- and not the conduct of the two men. Moreover, to the extent Lee's statement illuminates the actions of the two men, there is a substantial amount of "independent evidence" establishing these men did in fact ride in a vehicle with Lee. According to the government, multiple witnesses saw the two men drive off in the vehicle with Lee shortly after she made this statement. Moreover, a confidential witness is expected to testify that, according to Mr. Hunter, Mr. Samia and his partner drove Lee in a van and were seen by "a number of witnesses." See *Cicale*, 691 F.2d at 103-04; *cf. Delvecchio*, 816 F.2d 863. Therefore, Lee's statement falls within the state-of-mind exception of Rule 803(3).

Next, with respect to the firearms, that the government is seeking to introduce in the form of testimony from law enforcement agents. These are firearms and body armor that was seized from the residences of Mr. Samia and Mr. Stillwell after their arrests in 2014. I just want to confirm that these firearms and body armor -- you don't have any proof to suggest that these were used in the killing of Catherine Lee?

MR. EGAN: No, your Honor.

THE COURT: The government argues that this evidence is admissible either as "intrinsic or direct proof" of the charged crimes or to the extent that this evidence is in fact evidence of other prior crimes as evidence of motive, opportunity, intent under 403(b). As I will explain, I disagree, and don't think this testimony should come in.

With respect to the government's first argument, I do not agree that the seized firearms or body armor are intrinsic or direct proof of the charged crimes. As just acknowledged, there is no evidence that these firearms or body armor were used to kill Catherine Lee, nor is there any evidence that Mr. Samia or Mr. Stillwell brought these items to the Philippines in 2012 or used them in performing any other activities for the organizations security team. Moreover, the Court does not view this evidence as necessary "background" or "preliminary" information to the charged crimes as this evidence was seized approximately three years after Lee was killed. Thus, I don't find that evidence of the seized firearms and body armor is admissible as direct or intrinsic proof of the charged crimes.

I also find this evidence isn't admissible under Rule 404(b). Rule 404(b) governs the admissibility of evidence of prior or subsequent "bad acts," meaning "crimes, wrongs or acts" other than those charged in the indictment. As the government correctly notes, the Second Circuit follows an

"inclusionary" approach which "admits all 'other act' evidence that does not serve the sole purpose of showing the defendant's bad character and that is neither overly prejudicial under Rule 403 nor irrelevant under Rule 402." That's from the *Curley* case, 639 F.3d at 56. "Even under this approach, however, district courts should not presume that such evidence is relevant or admissible." When reviewing evidence admitted pursuant to Rule 404(b), courts consider whether "the prior acts evidence was offered for a proper purpose; whether the evidence was relevant to a disputed issue; the probative value of the evidence was substantially outweighed by its potential for unfair prejudice pursuant to Rule 403; and the court administered an appropriate limiting instruction." *Id.*; and see also the *McCallum* case, 584 F. 3d at 475.

In this case, even if evidence of the seized firearms and body armor is offered for a proper purpose and is relevant to a disputed issue, the probative value of this evidence is substantially outweighed by the potential for unfair prejudice under Rule 403. The probative value of this evidence is minimal and while this evidence may tend to suggest that Mr. Samia and Mr. Stillwell are familiar with firearms, this fact is not seriously disputed. Mr. Stillwell operates a business relating to gun accessories. The government intends to introduce evidence that David Smith met Mr. Samia at a specialized firearms training course. Moreover, as I mentioned

earlier, there is no evidence that these firearms or body armor were used in the course of killing Ms. Lee. In addition, this evidence was seized approximately three years after her murder.

Finally, any "expertise" Mr. Samia and Mr. Stillwell may have had in using firearms is not particularly relevant, as Ms. Lee was shot in a closed space at a close range. Thus, evidence of seized firearms and body armor would be of limited probative value at trial.

The evidence would, however, be quite prejudicial to Mr. Samia and Stillwell. Evidence of large quantities of firearms is likely to arouse fear in the minds of jurors and to leave them with the impression that Mr. Samia and Mr. Stillwell are simply dangerous people. It may also confuse the jurors, suggesting that Mr. Samia and Stillwell used the seized evidence while they were in the Philippines when there is no evidence that they did. Under the circumstances of this case, therefore, I think the considerations of Rule 403 weigh in favor of excluding evidence of the firearms and body armor seized from the residences of Mr. Samia and Mr. Stillwell after their arrest. See, for example, Judge Pauley's decision in the *Serrano* case, 192 F.Supp. 3d at 410.

We are just going to be a few minutes more, and then we will address Mr. Hunter's counsel. I want to address next -- sorry?

MR. EGAN: No.

THE COURT: -- Mr. Samia's request to exclude his post-arrest statement under *Miranda*.

I will note for the record that the parties have agreed that a hearing on this request is not necessary and that the Court may instead rely on the transcript and video recording. I am going to deny Mr. Samia's request.

Under *Miranda*, a suspect in custody must be warned that he has a right to remain silent; that anything he says may be used against him in a court of law; and that he has the right to the presence of an attorney before he may be questioned. To invoke his Miranda rights a suspect must do so "unambiguously" through a clear, affirmative action or statement. See Supreme Court decision in the *Berghuis* case, 560 U.S. 381-82; see also the *Plugh* case, 649 F. 3d at 124-25. A suspect may, however, "waive effectuation of these rights provided the waiver is made voluntarily, knowingly and intelligently." That's from *Miranda*, 384 U.S. at 444. A court may conclude a suspect has waived his *Miranda* rights if the government proves by a preponderance of the evidence that the "relinquishment of the right" was "voluntary in the sense it was the product of a free and deliberate choice rather than intimidation, coercion or deception," and "that it was made with the requisite level of comprehension, i.e., a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." In

determining whether a suspect has waived his *Miranda* rights, a Court must consider "the totality of the circumstances surrounding the interrogation."

In this case, Mr. Samia did not unambiguously invoke his *Miranda* rights before answering the agents' questions. After the agents read Mr. Samia his rights, he did not make any clear, affirmative act or statement indicating that he wished to invoke his rights. Rather, he proceeded to answer the agents' questions. While Mr. Samia did not sign the Acknowledgment of Rights and Waiver of Rights portion of the Advice of Rights form he received, the Second Circuit has specifically held that a suspect's refusal to sign such a form is not sufficient to invoke his *Miranda* rights. See the *Plugh* case, 648 F.3d at 125. Thus, Mr. Samia did not invoke his *Miranda* rights prior to make his post-arrest statement.

Instead, the government has proven by a preponderance of the evidence that he waived his *Miranda* rights. There appears to be no dispute that his statement was voluntary. He doesn't argue that he was subjected to any form of intimidation, coercion, or deception.

His statement was also made with a full awareness of the nature of the right being abandoned and the consequences of his decision to abandon it.

Before any questioning began, Special Agent Thomas Cindric read Mr. Samia his *Miranda* rights. Cindric asked

Mr. Samia if he understood his rights, and Mr. Samia replied "Yes." Special Agent James Stouch then handed Mr. Samia a printed form listing his rights. Cindric asked if Mr. Samia understood the information on the form. Mr. Samia again replied "Yes." Stouch then instructed Mr. Samia to review the form and to initial each right if he understood it. Mr. Samia initialed all the rights on the form. Stouch asked Mr. Samia to confirm that he understood his rights. Samia responded, "Yeah, I understand my rights." Mr. Samia then proceeded to answer the agents' questions. Mr. Samia's explicit statements to the agents and his decision to place his initials next to each of the *Miranda* rights as they were read to him leave little doubt he understood the rights he was abandoning and the consequences of doing so.

(Continued on next page)

THE COURT: This conclusion is reinforced by several other considerations. First, mr. Samia confirmed to Special Agent Cindric that he could read and write English.

Second, Mr. Samia was a mature adult, 41 years old at the time of questioning, and finally Mr. Samia, despite having no criminal record, had at least some familiarity with the criminal justice system.

His brother is a police officer in Massachusetts, and he was a reserve deputy sheriff. It's true, as Mr. Samia notes, that he did not sign the acknowledgment of rights and waiver of rights portion of the advice of rights form he received, but under the Supreme Court and Second Circuit precedent, however, this fact does not mean that Mr. Samia either invoked his Miranda rights or that he didn't waive them. See the Plugh case, 648 F.3d at 125.

Thus, Mr. Samia's failure to sign the acknowledgment of rights and waiver of rights portion of the form given to him was not sufficient to unambiguously invoke his Miranda rights and does not preclude a finding that he knowingly and voluntarily waived these rights through his conduct. See Plugh, 125 and the Berghuis case, 385-87.

Mr. Samia also asserts, in passing, that his Sixth Amendment right to counsel had attached at the time of his questioning because the indictment against him was filed on the same day as the questioning.

The premise of this argument is specious. According to the transcript, Mr. Samia's questioning began at 9:45 and lasted approximately one hour, which suggests that the grand jury may well have voted the indictment later that day.

In any event, even if Mr. Samia's Sixth Amendment right to counsel had attached, he waived this right through his conduct. It's settled that a suspect who is advised of his Miranda warnings has been sufficiently apprised of his Sixth Amendment right to counsel and, by waiving his Miranda rights, waives his Sixth Amendment right to counsel as well. See, for example, the Montejo case, 556 U.S. at 786-87; the Patterson case, 487 U.S. at 296-300; or Yousef, 327 F.3d at 142.

Accordingly, for the reasons I just explained, Mr. Samia waived any Sixth Amendment right to counsel that may have attached at the time of his questioning.

Before moving on, I just want to note for the record that at the September 14, 2017, conference I pointed out that Mr. Samia asked to speak with a lawyer after answering several of the agents' questions.

I asked his counsel whether this presented an issue he'd like to address, and he said no. And thus, in ruling on the Miranda claim today, I've considered only whether Mr. Samia invoked or waived his Miranda rights at the outset of his interrogation, not whether he invoked any right to counsel.

So the last issue, before we talk about scheduling, is the issue regarding Paul LeRoux's testimony regarding jurisdiction.

Mr. Ray, is there anything you want to add on this? I'm ready to rule.

MR. RAY: I guess my reaction to it is that the government keeps trying to suggest that we're trying to get Mr. LeRoux to draw a legal conclusion. I'm just thinking about it in ordinary cross-examination terms. Mr. LeRoux, you've pleaded guilty to a lot of crimes. I note that you're testifying about one you didn't plead guilty to. How come.

It may not come out quite that way. Whatever his answer is is his understanding of how come he wasn't prosecuted for that which he is testifying about since he is the one who orchestrated it.

Whether the answer is well, they didn't prosecute me, which is how he testified in Minnesota, they didn't prosecute me because they couldn't prosecute me. They didn't have jurisdiction over me.

What was your understanding of why they didn't have jurisdiction over you? Yes, in some sense, am I asking questions that are somewhat like legal questions or legal, but it's basically his understanding of why he wasn't prosecuted and to try to turn that into I'm asking him to render a legal opinion, that's not really what I'm asking.

THE COURT: Why is it important that you get out specifically that it's jurisdictional as opposed to, you know, my understanding is for some legal reason they couldn't?

MR. RAY: Because I think I'm entitled to more than that. Yes. I'm not asking him to be the arbiter of whether there is or isn't jurisdiction, but there's an explanation for why he wasn't prosecuted. Otherwise, you know, I'm going to impeach him to the effect that he got an absolutely fantastic deal from the government to not be prosecuted in this case.

The government should pick its poison. Do you want me to go one way or I go another way. One way or another, there's got to be an answer.

THE COURT: Does the government want to respond?

MR. EGAN: Our view has always been that the use of jurisdiction is ultimately going to lead to the confusion. I don't think the government is disputing that he can ask what benefits he has received.

I don't think it deprives him of anything to have Mr. LeRoux's testimony be I don't think I got a benefit because my understanding is they couldn't. Prosecute me for that, or if his answer is something along the lines of that was a big benefit, he could proceed.

I don't think that will be his answer. Our concern is with the use of the term "jurisdiction," something that they are going to be instructed on by the Court later. I don't

think the use of the word "jurisdiction" is necessary to make the point that he wants to make.

THE COURT: Do you think the jury may be left with some confusion if he says, they couldn't prosecute me and they're left to wonder why?

MR. EGAN: I don't think so. I think again, it would be explored a little further without delving into the word "jurisdiction." The concern is the use of that word. I mean, I think that is a word that has legal import. And also, as we said, it is an understanding that he derives from conversations with his counsel. So I think there is a way to explore it without using the term "jurisdiction."

THE COURT: On this one, I'm just going to reserve ruling. I'll rule sufficiently in advance of trial. Let me think about that.

I want to talk about scheduling, but then I want to address Mr. Hunter's request for new counsel.

Mr. Ray, you had requested that I address a jury instruction issue well in advance of trial. Right?

MR. RAY: Yes, your Honor, because I anticipate, since I think your Honor is going to want some time to reflect on that, that the parties should get to you well in advance so that that can be dealt with.

I anticipate that this whole question about how to deal with the charge under I think it's 18 U.S. Code, Section

956 and the question of what the government has to prove jurisdictionally as to Mr. Stillwell particularly and, particularly relevant here, his defense in that regard, which I think we've clearly signaled both to your Honor and to the government, is going to be an important one we submit should be reflected in the jury instruction.

With the backdrop of Judge Swain's prior rulings with regard to issues that bump up against due process, I think that's going to require some care, and I know we're operating in some novel territory here.

There are some form instructions. There is not a whole lot of case law out there. I think there are things that we want to bring to your Honor's attention, and I think it's going to require some crafting of instructions that are not going to be just to pull down the standard jury instructions for this charge.

I'm just previewing to give your Honor a sense of what we're asking the Court to look at, and I think that's going to take some time.

THE COURT: How would you propose you do it? Do you want to submit a brief?

MR. RAY: Yes.

THE COURT: Do you want to get me a full proposed request to charge in advance, or do you just want to highlight particular issues?

MR. RAY: I think this one is a highlight issue. Generally speaking, I consider a lot of jury instructions submitted to be largely a waste of time, your Honor.

Your Honor is more capable than we are with regard to those issues, except to the extent that there are particular things relevant to this case, this is one example. So I'd like to get the request to charge that's going to apply to that count before your Honor.

THE COURT: Okay. When can you get me your proposed instruction?

MR. RAY: I was thinking, consistent also with I guess what I saw of the proposed schedule with Mr. Kirton about their proposed pretrial motions, sometime in the neighborhood of February. I don't know if it has to be the exact date. I understand the government will want time to respond to the pretrial motions.

THE COURT: We'll see what happens with counsel, but I was actually going to have any motions on behalf of Mr. Hunter filed three months from today. So February 2, which is not exactly what you asked for, but close enough, to have the government's response due February 16 and Mr. Hunter's reply due on the 26th.

MR. KIRTON: Your Honor, if I could.

THE COURT: Yes.

MR. KIRTON: I submitted a letter this morning

requesting a February 12 filing date.

THE COURT: Right. I'm just giving you a little bit less so that we had a little bit more time.

Is there a particular reason why you need that extra --

MR. KIRTON: Today is November 2. It gives us 90 days to review all of the discovery, review the filings in the prior case, review the filings of co-counsel in this case. I think it gives us also two weeks to file a motion after our review of the evidence before this Court. So I think it's not an unreasonable request to ask for --

THE COURT: It's not unreasonable at all. I think three months is enough, but I'll give you an extra ten days. So your motions will be due February 12.

Is a week enough for the government to respond? Do you think you need more than that?

MR. EGAN: We'd like to, just because we don't know what the nature of it is going to be.

THE COURT: Why don't we give you until the 22nd to respond, ten days. Is that all right?

MR. EGAN: Yes.

THE COURT: Then we'll have March 1 for any reply.

MR. RAY: So, your Honor, to answer your question, if you would like us to do -- I don't know if that's too much to do at one time, but we could theoretically do the jury

instruction issue on that same schedule.

THE COURT: Yes, you can. Look. If you can do it earlier, all the better so we're not doing everything at once.

MR. RAY: Do you want to move it into January?

THE COURT: Yes, if you can. Is there a problem with that?

MR. RAY: No. There is not a problem.

THE COURT: Just tell me when in January. The schedule I just set is really for Mr. Hunter's motions. It's the February 12 date, any opposition February 22, and any reply March 1. Then I was going to schedule a March 9 conference at 11:00 a.m.

MR. STERN: If I could talk a little about the issue of the jury charges. I agree with Mr. Ray. We don't have to give you a charge, unless you want one, on reasonable doubt. You've given that a million times.

THE COURT: Sure.

MR. STERN: So I think what we'd like to do on the schedule you're suggesting is pick those charges which we think will be controversial or whatever and only give you those charges and not do what we sometimes do, which is give you a thick batch of material that we just xerox out of the charge book.

So on the schedule Mr. Ray is suggesting -- I'm not predicting what those will be, but we'll give it some thought

and give you only those on the assumption that there are no disputes as to what I'm going to refer to as the more typical charges.

THE COURT: That's fine. What I was separately going to do is have any pretrial submissions due March 14 and responses due March 21. I was going to have a final pretrial conference on March 28 at 3:00 p.m.

We should by then have handled all of the in limine motions, and the tricky charge issues, obviously we'll have a charge conference at some point during the trial.

So it's really just requests for proposed voir dire, and to the extent the government wants to submit a full request to charge, you're free to do so. But we'll have looked at these specific issues that Mr. Ray has suggested that will take a little more time and thought earlier. So that's the final schedule. That's Mr. Hunter's motion schedule.

Then the schedule, Mr. Ray, on this particular or these particular jury instructions -- when do you think you can get that?

MR. RAY: Rather than choosing Mondays, I was going to try to move it into the middle of the week. If we start it in or around let's say the 10th of January --

THE COURT: That's fine.

MR. RAY: -- then we could build in -- I don't think it's going to be in the back-and-forth too much. If the

government needs ten days from that, that would take it from the 10th to let's say the 19th of January.

THE COURT: Okay.

MR. RAY: So that's 1-10 and 1-19.

THE COURT: Then January 26.

MR. RAY: January 26 for a reply. That would put everything fully briefed in the month of January, if that's okay.

THE COURT: Do you want to have a conference to be heard on that? Does the government need more time to respond?

MR. EGAN: I think we'd like two weeks, just because it may be something that we need to run --

THE COURT: Understood. That's fine. We'll just say January 24 for the government's opposition.

MR. RAY: And then the 31st for a response.

THE COURT: That's right.

I'm not sure if this is something that I will write on or I won't write on, but do you want to be heard? Do you want to schedule a conference on this? Or should I just take a look at the papers first?

MR. RAY: I'm thinking we're going to want to be heard.

THE COURT: So let's just schedule a conference in February.

MR. KIRTON: I'm also assuming that this is subject to

any filings made by Mr. Hunter touching on the issues in that filing.

THE COURT: Yes, but I assume you can address this legal issue in January. You can do that at the same time you're reviewing discovery.

MR. KIRTON: To the extent that the Court made some rulings today, we may join in or not in terms of the motions made by co-counsel.

THE COURT: Right.

MR. KIRTON: So we'd like to have an opportunity to touch on the issues decided today.

THE COURT: You can touch on the issues decided today in your February motions.

MR. KIRTON: That's fine.

THE COURT: On this legal issue, I just think you should stick to the same schedule as counsel and address it in January.

MR. KIRTON: Just on that one issue?

THE COURT: Yes.

MR. KIRTON: That's fine. So maybe what I'll do is schedule a conference let's say on Friday, February 16, at 2:15.

Does that work?

MR. RAY: Yes. Yes, it does.

THE COURT: Then just finally, in terms of scheduling,

what else do we have? You're going to clean up the Bruton statements. Just get those as soon as possible so that we're not doing it last minute.

Is there anything else we need to set a schedule for?

MR. RAY: I'm sorry. Could I just have the dates in March again, the voir dire and the full request to charge. You had March 14 --

THE COURT: I had March 14 for pretrial submissions, any responses March 21 -- I'll put this in an order -- a final pretrial conference March 28 at 3:00 p.m.

MR. RAY: Got it. Thank you.

THE COURT: And speedy trial time is excluded until April 2, 2018.

MR. RAY: The only ruling that I didn't catch yet was we made an application in limine to preclude the government from introducing the statement of Mr. Hunter which is the video recording from Thailand.

I think I probably have a sense of where your Honor is likely to rule in that regard, but I just want that out. We specifically had an in limine application that was addressed to that statement obviously at a time that Mr. Hunter was not a codefendant in this case.

Part of our argument was that the conspiracy had ended and, therefore, that statement was in furtherance of the conspiracy. I understand that may in some sense be superseded

by the S10 superseder, but your Honor has not ruled on that particular in limine application.

THE COURT: I think, because Mr. Hunter is now a defendant, his statements are statements of a party opponent. So we have a very different context. So now you've got to look at Bruton. It may be that you want to revise your motion, but I think we're in a very different situation now.

Are we not?

MR. RAY: Well, I'll take a look at it. I need to understand then what's the -- the government's basis, I guess, is that -- it's not at a time when law enforcement was involved. It was at a time when he was being recorded, as I understand it, by an undercover agent.

The government's position was that that statement was admissible against the then two existing defendants in the case as an 801(d)(2)(e) statement. We oppose it on the grounds that the murder of Catherine Lee had already occurred; that this statement was made -- I can't remember how many months -- but more than a year later, and therefore, it should not be admissible.

I understand now, with Hunter as a defendant, it's still an out-of-court statement. So it would still have to be offered, I would assume, as an 801(d)(2)(e) statement. I guess it's an admission as well. So I guess the difference is that it's an admission now as opposed to just an 801(d)(2)(e)

statement.

THE COURT: That's correct. It's a statement of a party opponent.

MR. RAY: I think that, as my co-counsel has pointed out, it still may require your Honor to rule on the 801(d)(2)(e) aspect because if it's an admission, it would only come in against Mr. Hunter, and there would be a limiting instruction with regard to the other two. If you rule that it's a statement in furtherance of the conspiracy, then it comes in as to all defendants. Right? I think that's the point.

THE COURT: I was thinking that it would come in against Mr. Hunter. If you want to propose a limiting instruction or, again, if you want to make any more specific arguments as to why it shouldn't come in now, given that he's a defendant at trial, I'm happy to hear you out.

MR. RAY: That's probably what I should be asking for, which is the issue on a limiting instruction. I owe you one on something as well. So I'll include that in our submission.

THE COURT: The last thing I didn't do -- I know that we're going to be meeting a lot, but I feel like we have a lot of different issues to address. So, on Mr. Hunter's motions, I'm going to schedule a conference or a hearing, depending on what it is, on March 9 at 11:00.

I know it's a lot, but we'll be meeting in February to

address the jury instruction issue, in March to address Mr. Hunter's motions, and then we'll have a final pretrial conference at the end of March, on the 28th.

I think the things that we still need to address -- we'll see what Mr. Hunter's motions look like. The government will distribute revised versions of what they anticipate the agent testimony will be in Brutonized form. I still have to rule on the jurisdictional issue with Paul LeRoux, which won't take long. Then I think we have this issue about the impeachment of O'Donoghue and Smith.

So on that did you want to submit a letter, Messrs. Ray and stern?

MR. STERN: We will ask the government. We'll send them a letter stating our position. If they give it to us, then there is no issue.

THE COURT: Right.

MR. STERN: If they don't, then we'll write you about it.

MR. RAY: I join.

THE COURT: So I think that that's everything.

Anyone is free to stay, but I'm just going to address Mr. Hunter's request for additional counsel. What I was thinking may make sense is that we take a break, and Mr. Kirton, you hang around for a little bit. We'll have Mr. Hunter meet with the CJA attorney who is on duty and then

meet again.

And Mr. Hunter, you can tell me if you would like to change your counsel. But I'm only going to do it once. As I said, I'm going to keep this April trial date.

Does that work for everybody? All right. So why don't we adjourn for a few minutes.

MR. STERN: Judge, I take it they're going to take our clients back?

THE COURT: You can take their clients back.

You're free to stay or free to go. Thank you.

(Recess)

THE COURT: Good morning, Mr. Greenfield. Thanks for coming.

I understand that maybe you can't do the April 2 trial date after all?

MR. GREENFIELD: Well, I haven't said that yet, but I don't know that anybody, based on what I've read and heard, can do the April 2 trial date. There is an indictment that goes back two years, involves God knows how many different countries, and intricate facts.

THE COURT: It's five months off.

MR. GREENFIELD: Judge, I flat out could not represent to the Court, as I stand here now, that as an attorney with 51 years in the system, that I could get ready for a trial in this case in April. I wouldn't be serving Mr. Hunter's best

interest. There are a lot of things he was telling me that I can't speak about in open court that have to be addressed.

I have to learn the case. Mr. Stern, who I'm in the same suite as, has been in this case for two years, knows the facts intimately. I assume co-counsel does also. But they're way ahead of me in their preparation.

I'd be walking in cold. I'd be walking in trying to find out about relationships. I know that there has to be an investigation conducted in other countries. We'd have to find an investigator that might be able to go to another country. That's all I've learned in the last ten minutes.

So anybody who would tell the Court that they could be ready to go on April 2 is not really looking at the case. I think that date is a non date. It's going to create issues that are going to go last well past the case.

I won't accept the appointment respectfully because I don't think I could do the right job for Mr. Hunter. I'd like to come into the case. I'd like to try the case if I could.

THE COURT: I'm trying the case on April 2. If you're unable to do it, I'll find another CJA attorney who can. So that's what we'll do next.

MR. GREENFIELD: I'm sorry, Judge.

THE COURT: Thank you.

(Recess)

THE COURT: I'm just noting for the record,

Mr. Kirton, you're still representing Mr. Hunter. I just want to make that clear. I will try and get Mr. Hunter an attorney, if I can do so.

MR. KIRTON: Your Honor, I have a suggestion. I spoke to your courtroom deputy about this. There is an email server with an email list of CJA counsel. I would suggest that the Court contact the CJA clerks who can send out an email blast, and maybe someone will respond to that request.

THE COURT: I could understand if it was next month or two months from now, but this trial is five months away. I know it's a lot of work, but I don't think it's unreasonable to bring someone in at this point.

Mr. Hunter, do you want to say something? You have a right to speak, but you should also know that anything you say can be used against you.

DEFENDANT HUNTER: Yes, ma'am. I don't think this is fair to try this on April 2 because this case is so intricate. It not only involves this case, but it also involves my last case.

I can't imagine that anyone is going to be able to be competently aware of the facts in that time. My codefendants have been in this case for over two years already. I've only been in six months. Like I said, this involves my last case also. I don't see how -- I won't talk out of line, but it's unjust to me.

THE COURT: The reason that this case has been pending for so long in good part has nothing to do with how long it took the attorneys to prepare but, rather, efforts to get particular evidence from the Philippines that led to a delay.

In any event, I am keeping the April 2 trial date. It's five months away. I think that's reasonable.

I will make an effort to get another attorney for Mr. Hunter as quickly as I can. Thank you.

MR. KIRTON: Your Honor, the only problem with that date is I think we -- "we" being myself and Ms. Ferrone -- could be ready for that date only because we've been representing Mr. Hunter for about three years now.

I think it may be very difficult for a new attorney with a law firm to be able to represent Mr. Hunter sufficiently by an April 2 trial date. There are a lot of motions that have been filed by us and also by co-counsel in this case.

The Court has already made a number of very comprehensive rulings today, and that attorney would also have to understand all the filings in the prior matter, understand the filings in this case, and all the facts associated with this case.

I can tell you that I have been to four countries in preparation for trial in the other matters. It took a case budget. It took a lot of resources to be able to make those trips and to speak to those witnesses and to do all the due

diligence needed for representation in the prior case.

Again, we did that because we felt it was necessary. I don't know what the new attorney may feel or new law firm may feel is necessary for representing Mr. Hunter in this filing. But I know it's a very -- not hard-to-understand case, but it's a very intricate and very detailed matter that would require a great deal of attention.

THE COURT: Mr. Hunter, are you sure you want to have Mr. Kirton replaced, given his familiarity with your case?

DEFENDANT HUNTER: Honestly, I don't know.

MR. KIRTON: I think he has a right to change counsel. I'm not making an audition for myself.

THE COURT: I know that.

MR. KIRTON: I'm stating the facts as I know them. I think that we can be ready by April 2. If I couldn't, I would have said so. I don't play those types of games. But I don't know if -- I could be wrong. I think it may be very difficult to find someone else to be ready by that date. That's all I wanted to say.

THE COURT: This is the first I'm hearing about this, and I know it's the first that you're hearing about Mr. Hunter's request to change counsel.

Why don't you think about it, Mr. Hunter. Think about the experience that Mr. Kirton has had and the amount of time he's already spent on your case, and we'll schedule another

proceeding where we'll meet to discuss this.

In the meantime, I will see if I can get someone else who maybe can do it, maybe a big firm who has a lot of different people who can work on it.

MR. GREENFIELD: Judge, if I might, if Mr. Kirton stays, along with associate counsel, I might be able to be prepared to go forward on the April date, based on his experience, his knowledge of the case. We can divide up particular work.

THE COURT: Mr. Kirton, what's your view on that?

MR. KIRTON: I'd be prepared to stay in as long as the Court and Mr. Hunter allowed me to stay in. I could probably stay in for maybe up until the motion practice, and then he could take over from there. I'm happy to do whatever is necessary to get any attorney up to speed on this case.

MR. GREENFIELD: I think that, again, may cause -- I thought you were saying you could go right through a trial.

MR. KIRTON: I'm not sure how that would work. In light of his application, I don't know if that's going to create any additional problems. I was thinking more in terms of an administrative advisory role, as long as the Court and Mr. Hunter would allow.

THE COURT: Mr. Hunter, do you want to have Mr. Greenfield take over and have Mr. Kirton remain on the case so he can benefit from his knowledge? Or do you feel like

things have broken down to such a degree that you don't want to work with Mr. Kirton at all?

DEFENDANT HUNTER: Your Honor, after talking to Mr. Greenfield, I would prefer that he not be on my case and seek a new counsel that you might consider and sit down with that counsel and Mr. Kirton and get all the necessary information to make a logical decision on how to proceed forward, because right now I'm basically lost.

THE COURT: Look. The government is paying for your counsel. You don't get to pick and choose exactly who you want. That's not the way that it works.

On the other hand, if things have broken down to such a degree, I'm willing to consider this application. I've also agreed to appoint another attorney to assist Mr. Kirton. I'll see if there is someone else who can try the case on April 2, and then you can meet with Mr. Kirton.

Mr. Kirton, you can tell us if there is a role that you think you can play to bring your expertise to bear. But I don't know exactly how that would work either, and I don't want to intrude in the attorney-client relationship.

So you think we should try and see who we can get and meet again, Mr. Kirton?

MR. KIRTON: Yes. I just have a few scheduling issues. I have a trial starting in New York County Supreme Court on Wednesday, the 8th. I had a previously

scheduled trip out of town, which is going to start on Saturday. So I'll be out of town from Saturday, coming back to New York on Tuesday, starting a trial in that case on Wednesday.

THE COURT: Should we try and meet tomorrow?

MR. KIRTON: That was going to be my suggestion, if we could meet tomorrow to resolve these issues, if we could, because if not, then we're talking about the week after.

It would have to be the week of the 10th for this conference. So I'd like to try to resolve this issue tomorrow, if I could.

THE COURT: What about 4:00 p.m. tomorrow? Does that work?

MR. KIRTON: That's fine.

THE COURT: Does that work for the government?

MR. EGAN: That's fine for the government. I think it makes sense to have the proceeding. Obviously, we're not saying we need to be here for this part, but I do think, given some of the representations he's made, we need to flesh out or the Court needs to understand the nature of the breakdown here because he is asking to get rid of counsel who, by his own admission, who by counsel's admission, has this advantage of having been in the case.

Before the Court grants that and before we agree that Mr. Kirton could stay on, there should be some understanding of

the nature -- unless the Court has already done that. I don't know if that happened while we were outside.

THE COURT: I haven't done that. I believe Mr. Hunter said he's not sure if he wants to even try and get another attorney or stay with Mr. Kirton.

So what we'll do is we'll see if there are any attorneys that we're able to get by tomorrow at 4:00 who might be available, and we'll meet tomorrow at 4:00.

Mr. Hunter, I think you should really think about this. I think you should think about all the expertise Mr. Kirton has on this case. Then we'll come back, and I will want to better understand, outside the presence of the government, exactly why things have broken down to such a degree that you need a different attorney and want to bring someone in at this point who doesn't have experience in this case.

All I'm asking you to do for now is just think about it, and we'll come back, and we'll meet tomorrow at 4:00. Okay? Thank you.

Thank you, Mr. Greenfield.

MR. GREENFIELD: You're welcome, Judge.

(Adjourned)